

34.104 Contract clause.

Insert the clause at 52.234-1, Industrial Resources Developed under Defense Production Act, Title III, in all contracts for major systems and items of supply.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

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AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42352, Sept. 19, 1983, unless otherwise noted.

35.000 Scope of part.

(a) This part prescribes policies and procedures of special application to research and development (R&D) contracting.

(b) R&D integral to acquisition of major systems is covered in part 34. Independent research and development (IR&D) is covered at 31.205-18.

[48 FR 42352, Sept. 19, 1983, as amended at 55 FR 3884, Feb. 5, 1990; 65 FR 36014, June 6, 2000]

35.001 Definitions.

Applied research means the effort that (a) normally follows basic research, but may not be severable from the related basic research; (b) attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and (c) attempts to advance the state of the art. When being used by contractors in cost principle applications, this term does not include efforts whose principal aim is the design, development, or testing of specific items or services to be considered for sale; these efforts are within the definition of *development*, given below.

Development, as used in this part, means the systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of a potential new product or service (or of an improvement in an existing product or service) to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing; it excludes subcontracted technical effort that is for the sole purpose of developing an additional source for an existing product.

Recoupment, as used in this part, means the recovery by the Government of Government-funded nonrecurring costs from contractors that sell, lease, or license the resulting products or technology to buyers other than the Federal Government.

[48 FR 42352, Sept. 19, 1983, as amended at 53 FR 27467, July 20, 1988; 55 FR 3884, Feb. 5, 1990; 66 FR 2132, Jan. 10, 2001]

35.002 General.

The primary purpose of contracted R&D programs is to advance scientific and technical knowledge and apply that knowledge to the extent necessary to achieve agency and national goals. Unlike contracts for supplies and services, most R&D contracts are directed toward objectives for which the work or methods cannot be precisely described in advance. It is difficult to judge the probabilities of success or required effort for technical approaches, some of which offer little or no early

assurance of full success. The contracting process shall be used to encourage the best sources from the scientific and industrial community to become involved in the program and must provide an environment in which the work can be pursued with reasonable flexibility and minimum administrative burden.

35.003 Policy.

(a) *Use of contracts.* Contracts shall be used only when the principal purpose is the acquisition of supplies or services for the direct benefit or use of the Federal Government. Grants or cooperative agreements should be used when the principal purpose of the transaction is to stimulate or support research and development for another public purpose.

(b) *Cost sharing.* Cost sharing policies (which are not otherwise required by law) under Government contracts shall be in accordance with 16.303, 42.707(a) and agency procedures.

(c) *Recoupment.* Recoupment not otherwise required by law shall be in accordance with agency procedures.

35.004 Publicizing requirements and expanding research and development sources.

(a) In order to obtain a broad base of the best contractor sources from the the scientific and industrial community, agencies must, in addition to following the requirements of part 5, continually search for and develop information on sources (including small business concerns) competent to perform R&D work. These efforts should include—

(1) Early identification and publication of agency R&D needs and requirements, including publicizing through the Governmentwide point of entry (GPE) (see part 5);

(2) Cooperation among technical personnel, contracting officers, and Government small business personnel early in the acquisition process; and

(3) Providing agency R&D points of contact for potential sources.

(b) See subpart 9.7 for information regarding R&D pools and subpart 9.6 for teaming arrangements.

[48 FR 42352, Set. 19, 1983, as amended at 66 FR 27414, May 16, 2001]

35.005 Work statement.

(a) A clear and complete work statement concerning the area of exploration (for basic research) or the end objectives (for development and applied research) is essential. The work statement should allow contractors freedom to exercise innovation and creativity. Work statements must be individually tailored by technical and contracting personnel to attain the desired degree of flexibility for contractor creativity and the objectives of the R&D.

(b) In basic research the emphasis is on achieving specified objectives and knowledge rather than on achieving predetermined end results prescribed in a statement of specific performance characteristics. This emphasis applies particularly during the early or conceptual phases of the R&D effort.

(c) In reviewing work statements, contracting officers should ensure that language suitable for a level-of-effort approach, which requires the furnishing of technical effort and a report on the results, is not intermingled with language suitable for a task-completion approach, which often requires the development of a tangible end item designed to achieve specific performance characteristics. The wording of the work statement should also be consistent with the type and form of contract to be negotiated (see 16.207 and 16.306(d)). For example, the work statement for a cost-reimbursement contract promising the contractor's best efforts for a fixed term would be phrased differently than a work statement for a cost-reimbursement completion contract promising the contractor's best efforts for a defined task. Differences between work statements for fixed-price contracts and cost-reimbursement contracts should be even clearer.

(d) In preparing work statements, technical and contracting personnel shall consider and, as appropriate, provide in the solicitation—

(1) A statement of the area of exploration, tasks to be performed, and objectives of the research or development effort;

(2) Background information helpful to a clear understanding of the objective or requirement (e.g., any known